



squeezed, leaving red marks on his face,” and that “when [he] needed to use the toilet, he was physically strapped to the commode for extended periods of time.” (Doc. No. 1, at ¶¶ 8–9.) The motions filed by the defendants in this case are likewise functionally identical to those filed in *Sagan*, which the Court addressed in a Memorandum Opinion filed in that case, incorporated herein by reference to the extent that it is relevant. (*Sagan v Sumner Cnty. Bd. of Educ.*, Case No. 3:09-cv-1003, July 6, 2010 Mem. Op., Doc. No. 43.) For the reasons set forth therein, the Court rules as follows:

(1) Weidenbenner’s Motion to Dismiss (Doc. No. 27) is **GRANTED IN PART** insofar as Weidenbenner seeks dismissal, with prejudice, of the official-capacity and individual-capacity claims asserted against her in Count IV under the ADA and the Rehabilitation Act. Insofar as Weidenbenner’s motion otherwise incorporates or mirrors the motion filed by the School Board, it is **GRANTED IN PART AND DENIED IN PART** on the same grounds as those set forth with reference specifically to the School Board’s motion, below.

(2) Defendant Sumner County Board of Education’s Motion to Dismiss (Doc. No. 25) is hereby **GRANTED IN PART AND DENIED IN PART**. Specifically, the motion to dismiss under Rule 12(b)(1) for lack of subject-matter jurisdiction is **DENIED**; the motion to dismiss under Rule 12(b)(6) is **GRANTED IN PART** as follows:

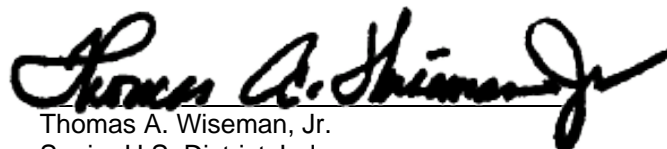
- Count III of the Complaint, seeking damages based on Defendants’ alleged violation of Plaintiffs’ rights to familial association, and that portion of Count I alleging a violation of John Doe’s right to familial association, are **DISMISSED** for failure to state a claim;
- The claims in Count IV of the Complaint against the Board are **DISMISSED WITHOUT PREJUDICE** based on failure to exhaust administrative remedies under the IDEA;
- Plaintiffs’ claim against the School Board based directly upon Weidenbenner’s behavior under a theory that Weidenbenner was an official policy maker for the Board is **DISMISSED**;
- Plaintiffs’ § 1983 claim against the School Board based solely upon the School Board’s purported “special relationship” with John Doe is **DISMISSED**.

In all other respects, the Defendants’ Rule 12(b)(6) motions to dismiss are **DENIED**.

(3) Defendants’ Motion to Strike paragraph 7 of the Complaint (Doc. No. 23) is **DENIED**.

This matter is referred back to the Magistrate Judge for further case management as may be necessary.

It is so **ORDERED**.



Thomas A. Wiseman, Jr.  
Senior U.S. District Judge